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No. 82-411

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY,
Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF AMICUS CURIAE ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES

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INTEREST OF THE AMICUS[1]

The Chamber of Commerce of the United States ("Chamber") is the largest federation of business organizations and individuals in the United States. The Chamber's current membership exceeds 235,000; this includes 231,000 corporations, partnerships, proprietorships and individuals, 1,240 trade associations, and 2,700 local and state chambers of commerce.

As one of its principal functions, the Chamber regularly advocates its members' views before this Court, as

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[1] Pursuant to Supreme Court Rule 36.2, this brief is filed with the written consent of the parties to this action.

well as the lower federal courts and regulatory agencies.[2] Because of the broad implications of cases decided under Title VII of the Civil Rights Act of 1964, as amended ("Title VII"),[3] the Chamber often expresses its members' views in these cases. *See, e.g., U.S. Postal Service* v. *Aikens*, No. 81-1044, *cert. granted* (March 22, 1982); *EEOC* v. *K-Mart Corp.*, Nos. 81-1722, 81-1909 (6th Cir. Dec. 8, 1982); *Lola Kouba* v. *Allstate*, Nos. 81-4536, 81-4566 (9th Cir. Nov. 16, 1982).

The Chamber has been pressing its views on the issue presented here, whether the EEOC exceeded its statutory authority in mandating that all employees subject to Title VII provide pregnancy benefits for spouses of employees when other spousal benefits are provided, since the adoption of the Equal Employment Opportunity Commission's ("EEOC" or "Commission") Guidelines on Sex Discrimination, 29 C.F.R. § 1604.10(b) (1981). Indeed, the National Chamber Litigation Center, Inc., the Chamber's litigation affiliate, is representing the plaintiff in the first case in federal district court challenging the guidelines at issue here, as well as several others. *Kansas Association of Commerce and Industry* v. *EEOC*, No. 79-4145 (D.Kan. filed August 2, 1979). The Chamber also submitted briefs *amicus curiae* in this matter to the United States Court of Appeals for the Fourth Circuit, both before the panel and the *en banc* court; and the Chamber filed a brief in support of the petition for a *writ of certiorari* to the Fourth Circuit.

The Chamber's interest in this issue is prompted by several factors. The breadth of the coverage of Title VII makes it applicable to an overwhelming majority of the

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[2] *See, e.g., Bowen* v. *U.S. Postal Service*, No. 81-525, —— U.S. —— (1983), slip op. January 11, 1983; *First National Maintenance Corp.* v. *NLRB*, 449 U.S. 1076 (1981); *Amoco Production Co.* v. *NLRB*, 613 F.2d 107 (5th Cir. 1981); *Gould* v. *NLRB*, 612 F.2d 728 (3rd Cir. 1979).

[3] Title VII applies to all employers of 15 or more persons.

Chamber's members. Moreover, the cost of complying with the EEOC's guidelines is significant. In *Kansas Association of Commerce and Industry* v. *EEOC*, the Court found that "each corporation subject to Q & A # 21 and 22 will have to pay an additional 3% to 18% higher insurance premiums." 22 FEP Cases 1343, 1347 (D. Kan. 1980); one of its members has informed the Chamber that its cost would exceed $450,000. *See*, Exhibit 1 to the Chamber's brief *amicus curiae* in support of the petition for a *writ of certiorari* in this case. These factors, coupled with the fact that limitations on dependents' pregnancy benefits were common prior to promulgation of the EEOC's guidelines, make it clear that unless the Fourth Circuit is reversed, many employer dollars will be expended on the direct and indirect cost of complying with the EEOC's *ultra vires* guidelines.

It is for all of these reasons that the Chamber files this brief urging this Court to reverse the decision of the court below, and approve the result reached by the U.S. Court of Appeals for the Ninth Circuit in *EEOC* v. *Lockheed*, 680 F.2d 1243 (1982), *petition for cert. filed*, 51 U.S.L.W. 2037 (Dec. 15, 1982) (No. 82-1006).

SUMMARY OF ARGUMENT[4]

The Pregnancy Discrimination Act ("PDA") amended Title VII of the Civil Rights Act of 1964 to incorporate discrimination because of, or on the basis of pregnancy within the definition of sex discrimination. However, the language employed by Congress makes clear that the PDA was intended to protect female *employees*, and not female dependents.

The extensive legislative history of the PDA provides a wealth of support for the statutory language. The PDA did not reverse *Gilbert* v. *General Electric*, 429 U.S. 125 (1976), with respect to non-employees.

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[4] In the interest of brevity, rather than restating the case, the Chamber incorporates by reference the statement of petitioner Newport News Shipbuilding and Dry Dock Company.

ARGUMENT

A. THE LANGUAGE OF THE PDA CANNOT JUSTIFY THE CONCLUSION THAT IT REQUIRES PREGNANCY BENEFITS FOR NON-EMPLOYEES.

It is axiomatic that interpretation of a statute begins with an examination of its language. It is also incontrovertible that statutory language is to be accorded "such effect that no clause, sentence, or word is rendered superfluous, void, contradictory or insignificant." *Ruiz* v. *Morton*, 462 F.2d 818, 820 (9th Cir. 1972), *quoting Rockbridge* v. *Lincoln*, 449 F.2d 567, 571 (9th Cir. 1971); *Richards* v. *U.S.*, 369 U.S. 1, 11 (1962).

The Chamber submits that the controversy concerning the compass of the PDA, 42 U.S.C. § 2000e-k, can be resolved by using the above approach, which is not only mandated by *stare decisis*, but also simply makes "good sense." The PDA, enacted as an amendment to Title VII, is a part of the definitional section of that Act, 42 U.S.C. § 2000e *et seq.* The PDA states, in relevant part:

> The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. . . . .

U.S.C. § 2000e-k.

The first clause of the PDA expressly enlarges the meaning of sex discrimination under section 703(a) of Title VII, 42 U.S.C. § 2000e-2,[5] by adding discrimination

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[5] Section 703(a)(1) reads as follows: (a) It shall be an unlawful employment practice for an employer: (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against

[Continued on page 5]

"because of," or "on the basis of pregnancy, childbirth, or related medical conditions." The second clause illustrates the kind of treatment mandated by Congress, explaining that "women affected by pregnancy, childbirth, or related medical conditions" must be accorded equality for "employment-related purposes" with non-pregnant persons who are "similar in their ability or inability to work." If section one of the PDA is interpreted to give meaning to its two parallel clauses, it must be read to apply to *employees*. As a practical matter, it is illogical to assume that employers could realistically assess a non-employee's "ability or inability to work," or that Congress intended that they do so.

This plain language approach is precisely the one adopted by the United States Court of Appeals for the Ninth Circuit in *EEOC* v. *Lockheed Missiles and Space Co., Inc., supra*. That court stated:

> The first clause is simply definitional: The word "sex" as used in § 703(a) is to be read to mean "pregnancy, childbirth or related medical conditions." Reading PDA against § 703(a)(1) the latter now provides that it shall be an unlawful employment practice for an employer to "discriminate against any individual with respect to his compenastion * * * because of such individual's * * * pregnancy, childbirth or related medical conditions." (Emphasis supplied.) The amendment would have the same effect on § 703(a)(2). This can hardly be read to apply to male employees. By choosing the definitional form of amendment, Congress has expressly limited the scope of its action to women employees.
>
> The second clause in its reference to women employees ("employment-related purposes"; "other persons not so affected but similar in their ability or

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[5] [Continued]

any individual with respect to his compensation, terms, conditions, or privileges of employment, *because of* such individual's race, color, religion, sex, or national origin. (Emphasis added.)

> inability to work") clarifies the Congressional intent by restating the substance of the first clause in other than definitional terms, and making it clear that its limitation to employees was not inadvertent.

680 F.2d at 1244. This is also the approach adopted by the district court in *EEOC* v. *Joslyn Manufacturing and Supply Co.*, 524 F. Supp. 1141, 1142 (N.D. Ill. 1981), *appeal docketed*, No. 82-1634 (7th Cir. April 14, 1982) ("The language 'employment-related purposes' and 'similar in their ability or inability to work' has a common sense reading that it pertains to women workers only").

While the court below characterized this construction of the PDA as "tortured," the Chamber submits that it is the better view, and urges this Court to approve the result reached by the Ninth Circuit.

B. THE LEGISLATIVE HISTORY BUTTRESSES THE STATUTORY LANGUAGE AND COMPELS THE CONCLUSION THAT THE PDA DID NOT ENTIRELY REVERSE *GILBERT* v. *GENERAL ELECTRIC*.

Admittedly, the Courts which have addressed this issue, including the Fourth Circuit in its decision below, have found the language of the PDA sufficiently ambiguous to delve into an examination of its legislative history. *E.g.*, *Newport News Shipbuilding and Dry Dock Co.* v. *EEOC*, 667 F.2d 448 (1982); *EEOC* v. *Emerson Electric Co.*, 539 F. Supp. 153, 156 (E.D. Mo. 1982), *appeal docketed*, No. 82-1647 (8th Cir. May 27, 1982); *EEOC* v. *Josyln Manufacturing and Supply Co.*, *supra*.[6] Upon concluding their review, with the exception of the court below, they have agreed with the Ninth Circuit that the law after enactment of the PDA does not re-

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[6] While the Ninth Circuit was persuaded by the statutory language, it found "further support for this construction" in the legislative history. *EEOC* v. *Lockheed*, 680 F.2d at 1245.

quire equating pregnancy benefits for female spouses with all other spousal coverage.

With all due respect to the Fourth Circuit, the Chamber submits that it made the same error in examining the legislative history that it made in examining the statutory language itself. It did not give due consideration to *all* of the legislative history.

Overlooking the overwhelming majority of the legislative history the panel, and ultimately the majority of the court *en banc*, relied exclusively upon floor statements by Senators Birch Bayh and Alan Cranston.[7] Both of these Senators made perfectly clear that the views they expressed were personal, and not the collective views of the Senate, or even the committee. *See*, Legislative History at 75 and 130.[8] Indeed, rather than being definitive, Senator Bayh's remarks were quite reflective in tone. *Id.* at 75.

When reviewed in its entirety, the legislative history makes clear that the Fourth Circuit's interpretation was totally at odds with the views of the primary sponsors of the PDA in both the House and the Senate, and the Committees which favorably reported the bill.

Congressman Augustus F. Hawkins, who introduced the PDA in the House, described what in his words was the "narrow approach" of the bill as follows:

> H.R. 6075 was introduced during the first session of the 95th Congress to clarify Congressional intent that sex discrimination includes discrimination based on pregnancy and specifically to define the standards which require that *pregnant workers be treated the same as other employees on the bases of their ability or inability to work.* (Emphasis added.)

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[7] 667 F.2d at 451.

[8] Committee Print of the legislative history of the Pregnancy Discrimination Act, June 1980, prepared by the Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess.; hereinafter "Leg. Hist."

Leg. Hist at 166. Congressman Hawkins's language, which is almost identical to the language ultimately included in the PDA, invites the inference that it was not coincidental. In this same speech Congressman Hawkins went on to detail examples of disadvantages in the workplace and dire economic consequences which *working women* had suffered because of inadequate or nonexistent pregnancy coverage. Leg. Hist. at 166-168.

Similarly, when Senator Harrison Williams, Chairman of both the subcommittee and committee responsible for the legislation, and a principal sponsor of the legislation, introduced S. 995, which ultimately became the PDA, he stated:

> . . . The Supreme Court's decision . . . in the case of Gilbert against General Electric Co. came as a deep disappointment to *working women* across the nation . . . The 6-3 majority in the Gilbert case concluded that women who must take time off from work because of pregnancy or related disabilities are not entitled by law to the same benefits that their employers provide for workers who have contracted other disabilities. (Emphasis added).

Leg. Hist. at 1.

The Fourth Circuit also completely overlooked what may be the most telling legislative history of all. We refer to an exchange between Senators Williams and Orrin Hatch, wherein they discussed the scope of the PDA:

> Mr. Hatch: The phrase "women affected by pregnancy, childbirth or related medical conditions," . . . appears to be overly broad, and is not limited in terms of employment. It does not even require that the person so affected be pregnant.
>
> *Indeed, under the present language of the bill, it is arguable that spouses of male employees are covered by this civil rights amendment. . . .*

Could the sponsors clarify exactly whom that phrase intends to cover?

. . . . .

Mr. Williams: With regard to more maintenance plans for pregnancy-related disabilities, I do not see how this language could be misunderstood.

Mr. Hatch: Because it is very broadly drafted and if we say "affected by" it, that includes all of those illustrations that I have just enumerated. If it does not, *I want to be sure that everybody knows from the record that it only refers to the woman employee who is pregnant or who becomes pregnant after her employment.*

Mr. Williams: If there is any ambiguity, with regard to income maintenance plans, I cannot see it. ". . . shall be treated the same for all employment-related purposes." I do not see how one can read into this any pregnancy other than pregnancy that relates to the employee, and if there is any ambiguity, let it be clear here and now that this is very precise. It deals with a woman, a woman who is an employee, an employee in a work situation where all disabilities are covered under a company plan that provides income maintenance in the event of medical disability; that her particular period of disability, when she cannot work because of childbirth, is excluded. It is narrowly drawn and would not give any employee the right to obtain income maintenance as a result of the pregnancy of someone who is not an employee.

Mr. Hatch: OK; or the effects on other people as a result of the pregnancy of any female employee.

Mr. Williams: Exactly. It does not.

Mr. Hatch: So the Senator is satisfied that, though the committee language I brought up, "woman affected by pregnancy" seems to be ambiguous, what it means is that this act only applies to the particular woman who is actually pregnant, who is an

> employee and has become pregnant after her employment?
>
> Mr. Williams: *Exactly.*

Leg. Hist. at 80. (Emphasis added.) [9]

Relying on S. Report 95-331, the Report of the Senate Committee on Labor and Human Resources, the Fourth Circuit concluded that Congress may well have intended to leave the question of dependents' benefits an "open question." 667 F.2d at 451. Despite this concession, the majority of the *en banc* court rejected the contention that the question of dependents' benefits should be resolved upon a consideration of the reach of Title VII prior to enactment of the PDA. But in doing so, the Fourth Circuit overlooked a significant statement in the same committee report:

> . . . it must be remembered that the basic purpose of this bill is to protect women employees, it does not alter the basic principles of Title VII law as regards sex discrimination.
>
> • • • •
>
> Therefore, the question in regard to dependents' benefits would be determined on the basis of *existing* Title VII principles.

Leg. Hist. at 42-43. (Emphasis added.)

The plain and only meaning of "existing" in this context is the case and statutory law in existence prior to the passage of the PDA. As the Ninth Circuit expressed it:

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[9] These references to the legislative history are only intended to highlight what we believe to be the most significant support for the proposition that the PDA was intended to reverse *Gilbert* v. *General Electric* only in its application to female employees. The record is replete with additional support. *See, e.g.*, Leg. at 7 (Remarks of Senator Brooke); Leg. Hist. at 168 (Congressman Sarasin); Leg. Hist. at 185 (Congressman Tsongas).

> It is thus clear that in enacting PDA, Congress had in mind the fact that a question was presented as to dependents' benefits and deliberately chose not to deal with it. The Senate Report explicitly states that the basic purpose of the legislation was to protect women employees; that Congress did not regard the bill as altering the basic principles of Title VII respecting sexual discrimination and intended that those unaltered basic principles would apply in determining dependents' benefits. In the eyes of Congress then, PDA did no more than provide that an exception to Title VII's basic principles was to apply in the case of women employees. (footnote omitted).

Lockheed v. EEOC, supra at 1246.

The Court went on to conclude that:

> under basic principles of Title VII, as they existed prior to PDA, exclusion of pregnancy-related medical expenses of spouses of male employees was not gender-based discrimination in violation of § 703(a) of Title VII. We further conclude that PDA did not change those principles.

Id.

CONCLUSION

The decision of the Fourth Circuit below is irreconcilable with both the language of the PDA and its legislative history. It erroneously supports the EEOC's attempt to administratively "legislate" the provision of pregnancy benefits for spouses. Without belaboring the point, the issue is not whether providing non-employee benefits is a desirable social goal. Rather, the issue is whether Congress authorized the EEOC to effect that goal. It is inconceivable that Congress would have moved to incorporate a new class of protectees in civil rights law without lengthy deliberations and studies. And as more than one proponent of the PDA has stated, "[t]his legislation does not represent a new initiative in employment discrimina-

tion law, neither does it attempt to expand the reach of Title VII of the Civil Rights Act of 1964 into new areas. . . . Rather this bill is simply designed to restore the law with respect to *pregnant women employees* to the point where it was prior to *Gilbert*." (Remarks of Senator Javits, the ranking minority member of the Senate Committee on Labor and Human Resources). Leg. Hist. at 66.

Accordingly, the Chamber urges this court to reverse the decision of the court below.

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